

REHABILITATION OF ABANDONED HOUSING PROJECTS IN PENINSULAR MALAYSIA: LESSONS FOR HOUSING ENTREPRENEURS

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Abstract

Abandoned housing projects is one of the housing problems in Peninsular Malaysia. Even though there are laws and policies provided by the Malaysian government to govern housing industry, yet abandoned housing projects problem is still an unsettled issue for the Malaysian government to tackle. The real victims are the purchasers themselves. Virtually, there is no specific and common ways to face the problems of abandoned housing projects. This is due to the fact that in each and every abandoned housing project, the problems and issues faced by the stakeholders vary. This paper will discuss the law and practice in the rehabilitation of abandoned housing projects in Peninsular Malaysia. From the discussion, certain suggestions will be forwarded at the end part of the paper for facilitating the implementation of the rehabilitation of abandoned housing projects in Peninsular Malaysia by the housing entrepreneurs.

Keywords: abandoned housing projects, rehabilitation, Peninsular Malaysia, law and practice.

INTRODUCTION

A housing project in Peninsular Malaysia can be deemed to have been abandoned when:

system'. Under this system (full build then sell system), the developers are to build the purported housing units until full completion with Certificate of Fitness for Occupation (CF) or Certificate of Completion and Compliance ('CCC'), as the case may be, and they (the developers) must ensure that, the titles to the completed housing units are ready for due transfer to purchasers on settlement of the purchase price. Only, then can the developer sell the completed units to purchasers. Thus, this system will eliminate altogether the problem of abandoned housing projects, as the purported housing purchased has been completed with CF or CCC and ready for full occupation.

The current system which predominantly is the 'full sell then build' (through Schedules G and H (the statutory standard sale and purchase agreements) in the Housing Development (Control and Licensing) Regulations 1989) has many weaknesses which can lead to the abandonment of housing projects. Under this system, purchasers have to pay a deposit of the full purchase price (usually representing 10% of the purchase price) and the balance 90% shall be paid progressively in accordance with the progressive development stages. Each of these development stages once completed, must be supported by the architect or engineer's certificate, indicating that the particular development stage has been duly completed. On the completion of the respective development stages supported by the architect or engineer's certificates will entitle the developer to payment by the end-financier of the purchaser. Even though there is a requirement of the law (clause 4(2) in the schedule of payment of Schedules G, H, I and J), requiring that the completion of the development stages shall be supported by the architect or engineer's certificate, this certification can be abused by these professionals on the instruction of the developer to the detriment of the purchasers' interests. As a consequence, if the project is abandoned and there is plan for rehabilitation, the available loan fund still in the hands of the end-financiers or in the Housing Development Account (HDA) may not be sufficient to meet with the rehabilitation costs. This means that, unless there is additional fund to cover the shortfall of the balance loan, the rehabilitation may not be duly carried out.

Nonetheless, very recently, the Malaysian government has introduced the '*quasi* build then sell system' through the promulgation of Schedules I and J (the statutory standard sale and purchase agreements). Under this type of housing delivery system, the purchasers are to pay deposit (usually representing 10% of the purchase price) to developer. The balance 90% of the purchase price shall be paid on the completion of the house on the issuance of the CF or CCC, as the case may be, and the title to the housing unit is ready for registration in favour of the purchasers on full settlement of the purchase price. Nonetheless, this type of delivery may not be an effective means to eliminate the problem of abandoned housing projects. There is no guarantee that the developers can complete the construction of the house within the prescribed time period, after the payment of 10% deposit. Further there is a possibility that the developers may terminate the construction of the projects in the mid-stream of the development and run away together with 10% deposit paid by purchasers, leaving the purchasers in the lurch.

No Mandatory Legal Requirement for Obtaining Housing Development Insurance

regime and requirement for the applicant developer to possess housing development insurance before his application for housing developer's licence can be issued by the Housing Controller (Ministry of Housing and Local Government file number: KPKT/08/824/7347-1).

No Specific Legal Provisions Governing the Rehabilitation Schemes

There is no requirement under the Housing Development (Control and Licensing) Act 1966 (Act 118) and its regulations, providing a special regulation controlling the rehabilitation scheme of the abandoned housing projects. It is proposed that a specific legal regime governing the rehabilitation scheme be made by the Minister of Housing and Local Government and passed by Parliament (Md Dahlan, 2007: cxxvi). It is opined that, by having this regulation, problems in the rehabilitation of abandoned housing projects as occurring in Peninsular Malaysia can be avoided. It is opined that, a special law is required to control and cater for the rehabilitation of the abandoned housing projects. Without a special rehabilitation scheme governing rehabilitation of abandoned housing projects, many abandoned housing projects cannot be duly rehabilitated or the rehabilitation may fail, to the chagrin of the purchasers.

GRIEVANCES AND TROUBLES FACED BY PURCHASERS

The obvious grievance and problem faced by the purchasers, if the housing development projects are abandoned in Peninsular Malaysia is that they (the purchasers) are unable to get vacant possession of the housing units on time as promised by the vendor developers. The statutory standard sale and purchase agreements of housing accommodation (Schedules G, H, I and J) provide that the developer shall complete the construction of the houses and deliver the vacant possession within 2 years (for landed property) or 3 years (for flat building), as the case may be, from the date of the sale and purchase agreement. If the development of the project is abandoned, the houses will not be completed in 2 or 3 years. The units may be completed beyond 2 or 3 years, after the date of the sale and purchase agreement, or in the worst circumstances, the developer is unable to complete the project altogether and this may mean that the project will remain abandoned for a long time unless the project can be rehabilitated and completed expeditiously (Md. Dahlan, 2006: 6, Md. Dahlan, 2007a: 1, Md. Dahlan, 2007b: clvii, Md. Dahlan, 2009).

Further, despite the fact that the project being abandoned, the purchasers will still have to bear all the monthly installments to their respective end-financier lenders (for repayment of the housing loan granted). Otherwise, the purchased lots together with the building to be erected thereon which has been charged to the end-financier lenders being the security for the housing loan, will be sold off and if there were short-falls on the amount owing, in the worse predicament, the purchasers may be made bankrupts by the end-financier lenders. In consequence of having failed to occupy the purported housing

paying off the bonds and loan debts and to the government (Ministry of Finance ('MOF')). After the cessation of Danaharta on 30 September, 2005, some projects, being the residual surplus works still unfinished by Danaharta, were handed over to one Syarikat Prokhas Sdn. Bhd ('Prokhas'). Similarly, the function of Prokhas is akin to an 'estate agent' as Danaharta was. There is no project rehabilitated by Prokhas. It is up to the buyers of these projects to resume the construction or otherwise. Thus, it is opined, the existence of Danaharta and Prokhas do not provide solutions for abandoned housing projects, especially for protecting the purchasers' fates by way of carrying out the necessary rehabilitation (Md. Dahlan, 2009: 140-141).

The abandoned housing projects occurring in Peninsular Malaysia can be categorized as follows:-

- a. Projects with potential for rehabilitation;
- b. Projects taken over by other new developers;
- c. Projects not suitable for rehabilitation; and
- d. Completed rehabilitated projects (Division of Supervision and Enforcement, n.d: 1).

In Peninsular Malaysia, abandoned housing projects which fall under the category of having potential for rehabilitation can be divided into 4 (four) types as follows:-

- i. Project which is newly identified;
- ii. Project under probability/feasibility study;
- iii. Project readied for rehabilitation;
- iv. Project under construction (Division of Supervision and Enforcement, n.d: 1).

Projects which fall under the category of 'having potential for rehabilitation' are projects which are in dire need of special rehabilitation schemes, plans and strategies, because these projects involve a broad spectrum of parties such as the landlords, developers/other developers for taking over the projects, financial institutions, government technical agencies, local authorities, local planning authorities, purchasers committees and Malaysian Insolvency Department (Division of Supervision and Enforcement, n.d: 1).

The number of projects falling under this category increases from 99 projects in 2003 to 121 projects as of June, 2005. The upward increase was due to the financial and management problems faced by developer companies, as well as the results from economic recession encountered by the nation (Division of Supervision and Enforcement, n.d: 1).

Most of the types of houses which fall under the category of 'Project Which Are Still Abandoned' have the possibilities and potential for rehabilitation. These houses consist of low-cost-houses – 4,247 units (8%), condominium/apartment – 13,766 units (25%) and medium-cost-flat – 13,579 units (24.4%). The other remaining types of houses that fall under the category of 'Project Which Are Still Abandoned' have the possibilities and potential for rehabilitation, are 165 units of bungalow-houses (0.3%), 204 units of semi-detached-single-storey-houses (0.5%), one(1) unit of semi-detached-

Most of the rehabilitations were left to the discretion of the rehabilitating parties with the cooperation and assistance of the chargee lender banks, purchasers, local planning authorities, local authorities, technical agencies, the states and federal authorities, the end-financiers, the land offices and MHLG. The stringent laws governing housing development, land, banking, planning and building, were mostly made relaxed and flexible to accommodate the needs and to facilitate the due execution of the rehabilitation schemes (Md. Dahlan, 2009: 142-143).

The following sub-topics deal with the types of rehabilitation of abandoned housing projects in Peninsular Malaysia. The information of these rehabilitation are mainly derived from the reported case law from the major mainstream Malaysian law reports—Malayan Law Journal (MLJ) and Current Law Journal (CLJ).

Projects Which Fail To Be Rehabilitated And Remain Abandoned Forever

According to MHLG, any purported rehabilitation cannot be carried out due to the following factors:

- There are no or insufficient purchasers interested to buy the houses;
- Works on the sites of the projects have not been commenced or are still at the stage of soil works because of the hard rocks, granite and soils' problems;
- The original developers have been wound up and the project financiers have auctioned off the projects or sold off the projects to other parties. If the projects have been taken over by other new developers and the construction of the projects are resumed by them, then the projects so undertaken are considered to be new projects and no more under the previous defaulting developers' control and will not and cannot be considered abandoned housing projects. This also means, new sale and purchase agreements will have to be executed between the purchasers and the new developers;
- The application to TPPT of Bank Negara has been rejected as the project is not viable for rehabilitation. This is because, according to TPPT, if the purported rehabilitation were still to be proceeded with, it would, otherwise, cause substantial losses and adverse financial effects on the rehabilitating parties;
- The developer has absconded and the existing purchasers are not interested or are unwilling to rehabilitate the projects so abandoned; and,
- Interested parties such as the land-owners, developers, bridging loan bankers, purchasers' end-financiers, contractors, consultants and purchasers are unwilling to compromise. They prefer to resort to legal action for settling the problems faced (Division of Supervision and Enforcement, n.d: 7&8).

The housing projects which fall under the above category are Taman Desa Surada, Kajang, Selangor, Kondominium Esplanade, Klebang, Melaka, Taman Perdana Muar, Mukim Serong, Muar, Johor, Taman Perwira Jerantut, Fasa II, Jerantut, Pahang, Taman

Bintong Dasari Sdn. Bhd, where without being properly supervised and monitored, the rehabilitation of the project had been prolonged, much longer period than what it had been initially projected for, with various kinds of problems and difficulties faced by the rehabilitating developer, including the problem of recalcitrant contractors, purchasers, bankers and authorities. Fortunately, however, the revival of this project had, finally, been completed on 12 June, 1998, after becoming abandoned since 1992;

- To avoid any abuse and misuse of duty, power, and authority, when the project is undergoing the process of rehabilitation, caused by consultants, contractors, receivers, managers and liquidators. The rampant abuse and misuse of duty, power and authority by these irresponsible parties, has become the current typical phenomena in the rehabilitation of abandoned housing projects in Peninsular Malaysia, much to the dismay and detriment of the purchasers. Taman Bistari Kamunting, Taiping, Perak developed by Sri Ringgit Properties Sdn. Bhd is the perfect example of this phenomenon. The problem with this project is that, the rehabilitating contractors--Setia Laris Sdn. Bhd and Super City Triumph Sdn. Bhd had failed to plan properly and had transgressed certain rules and regulations, which all in all, subtle or obvious, had retarded the due progress of its rehabilitation. This project had been abandoned since the middle of 1980s but fortunately, however, with the injection of welfare funds and rehabilitation carried out by Syarikat Perumahan Negara Berhad (SPNB) in early 2000s, the project is now fully rehabilitated and ready for occupation, after it had been abandoned for almost 20 years;
- To prevent any unwarranted and unnecessary disturbing actions such as legal actions commenced by dissatisfied parties. Without any such disturbing actions, it would certainly help the new rehabilitating developers or the previous defaulting developers in case they are agreeable and are fit to resume the project, to smoothly carry out the rehabilitation. This problem, can be illustrated in Taman Perpaduan Permai, Bercham Ipoh developed by Trinity Home Builders Sdn. Bhd, where in this case, the project should have been completed by year 1999, however until now no rehabilitation has been undertaken. To worsen the matter, 18 purchasers have filed writ of summons against the defaulting developer praying for specific performance, damages and other equitable remedies against the defaulting developer; and,
- To prevent any abandoned housing project from being stalled for an indefinite period of time, without any positive and prospective rehabilitation plans and development. This problem can be illustrated in Taman Sri Intan, Besut, Terengganu, developed by Tenaga Wan Bersaudara Sdn. Bhd. This project should have been occupied and completed by year 1999. However, it was later abandoned and until now there is no plan for rehabilitation. Furthermore, the developer fails to inform MHLG the latest development and plan for the rehabilitation of its project (Md. Dahlan, 2009: 185-188).

enough professional staff, enough legal and technical training, office facilities and logistics of the administration and efficient administration to ensure the success of housing development projects;

- 6) As currently there is no provision in Act 118 requiring the applicant developer to have housing development insurance and the housing system is substantially based on 'full sell and build' as well as there is no provision in Act 118 which provide regulations for controlling rehabilitation of abandoned housing projects, it is advisable for the aggrieved purchasers and the rehabilitating parties in the rehabilitation of abandoned housing projects to get the necessary court's order to facilitate the rehabilitation. The order should contain, *inter alia*, the mode of the rehabilitation; the responsibilities of the rehabilitating parties, the related parties and the purchasers; the management of the cash-flow of the rehabilitation funds; and the sources of the rehabilitation funds to finance the rehabilitation costs; and,
- 7) Finally, if the above suggestions cannot be actualized and that if rehabilitation of the abandoned housing projects seem impossible and difficult to proceed, it is proposed that the aggrieved purchasers of the abandoned housing projects to apply to the court for recession of the sale and purchase agreements entered into with the abandoned vendor developers, claim all moneys paid and costs as well as the late delivery damages calculated from the date of the promised delivery of the vacant possession of the purported units purchased until the date of the recession of the sale and purchase agreement. This is finding of the court in *Diong Tieow Hong & Anor v Amalan Tepat Sdn Bhd* [2008] 3 MLJ 411 (High Court at Kuala Lumpur). Whereby in this case, the plaintiffs entered into a sale and purchase agreement (S&P) with the defendant (developer) for the purchase of a condominium at the price of RM 287,900.00. The S&P was as per the prescribed Schedule H of the Housing Developers (Control and Licensing) Regulations 1989 (Schedule H). Pursuant to clauses 22 and 24 of the S&P, the defendant should deliver vacant possession of the property, complete with common facilities on or before 14 October 1998. Unfortunately, the defendant failed to do so and the project had been abandoned. The plaintiffs had paid a total sum of RM 57,000.00 towards the purchase price. The plaintiffs, vide letter dated 8 March 2004, demanded the construction of the property be completed and that vacant possession be handed over on or before 8 May, 2004, failing which the S&P shall be deemed terminated. Again, the defendant failed to do so. The plaintiffs then initiated a claim against the defendant, for, *inter alia*, declarations to the effect that the defendant had breached the terms of the S&P and that the plaintiffs had duly terminated the same, the refund of RM 57,900.00 and liquidated ascertained damages (LAD). This project was an abandoned housing project fall under the jurisdiction and power of the Ministry of Housing and Local Government (MHLG) and subject to the provisions of Act 118.